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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,642	08/06/2003	James Chyvan Moore	153-1	1641
23772	7590	04/14/2004	EXAMINER	
STEPHEN CHRISTOPHER SWIFT SWIFT LAW OFFICE SUITE 600 1800 DIAGONAL ROAD ALEXANDRIA, VA 22314-2840				MARKS, CHRISTINA M
ART UNIT		PAPER NUMBER		
		3713		
DATE MAILED: 04/14/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/604,642	MOORE ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	C. Marks	3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 August 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 06 August 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                                               |                                                                             |
|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                          | Paper No(s)/Mail Date. _____ .                                              |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>08062003</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|                                                                                                                                               | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

### *Drawings*

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the method of playing a card game (steps included) must be illustrated or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Claim Objections*

Claims 1-20 are objected to because of the following informalities: Under 37 C.F.R. §1.75(i), each element or step should be indented when listing a plurality of steps or elements. Appropriate correction is suggested.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5-6, 10 and 15-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 5, 15, and those dependent therefrom, the claim is indefinite in that one of ordinary skill in the art would not understand how the claimed maximum rank is associated with the prior mentioned method in the parent claims. A skilled artisan would not understand how the maximum rank is defined nor explains as to how it is incorporated in a manner wherein it affects the payout schedule. That which defines the maximum rank is not

Art Unit: 3713

properly defined as to allow one of ordinary skill in the art to ascertain its affect on the game and the language is thus indefinite.

Likewise, regarding claims 6 and 16 and due to the indefiniteness in defining maximum rank, one of ordinary skill in the art would not be able to ascertain a minimum rank as neither is properly defined as to allow a skilled artisan to correlate them to tangible parts of the method. Thus, a skilled artisan would not be able to incorporate how they work in the system to set limits and rules. As neither is properly defined, it cannot be understood how they affect the method and thus the language is indefinite. Further, the requirements for the betting structure are not easily understood as a skilled artisan would not understand the dictated requirements.

Regarding claim 10, the claim is indefinite as it includes parenthesis after some statements defining them in a different way. This does not serve to properly define that which the applicant regards the invention. It is not clear whether the parenthesis is intended as part of the limitation or not. A skilled artisan would not be able to ascertain that which is or is not included in the limitation. The method described for the payout is also indefinite in that a skilled artisan would not understand how the restrictions on betting relates to the game and exactly how payouts are presented or established.

For examination purposes, the claims will be evaluated as best possibly understood by one of ordinary skill in the art.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-19 (as best understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US patent No. 6,264,200).

Smith discloses a method of playing a card game that includes dealing cards to a dealer being dealt from the deck wherein the cards have a plurality of ranks, the players place bets and each player bets on the card having a certain rank (Abstract). Smith discloses a universal set being dealt and players betting before the dealing (FIG 1); however, it would be an obvious alteration to one of ordinary skill in the art to allow the cards to be dealt face down so betting could occur after. The timing of the betting is a non-critical element and both are interchangeable to achieve the same goal. Using one over another would be an obvious design choice motivated by the designer based on the wants and needs. Further, dealing to each player would be obvious over each player wagering on a single set of cards. The result is still the same with the player wagering on what the card is. Using one method over another is a design choice obviated by the fact that no significant change in formality results from the way in which the betting occurs. Again, a skilled artisan is motivated by the wants and needs for their game as to which method to employ. It is then determined which players have placed winning bets and they are paid off accordingly by a predetermined pay schedule. Smith discloses that a zero can be bet on and pays at a rate higher than the other cards as there is only one zero in the deck per four occurrences of the other numbers (Column 8, lines 10-12).

Regarding claim 2, the players are provided with a betting surface divided into areas on which bets can be placed for cards of different ranks (FIG 1).

Regarding claim 3, the spaces have indicia indicating the rank bet on. The indicia don't specifically denote the payoff for a winning bet; however, a skilled artisan knows such indications are notoriously well known to be displayed on the table to aid the user in betting and the indication of such would be obvious wherein the designer would be motivated by the desire to draw players to the table by properly informing them of the games to be played.

Regarding claim 4, Smith discloses betting options wherein a series of numbers can be bet on including a set of numbers higher than and including the current bet (FIG 1).

Regarding claim 5, the betting surface does not have areas for which there is no payoff. However, the fact that Smith discloses in the preferred embodiment that the ace is considered to have a numerical value of one while the jack, queen, and king all have the numerical value of ten (Column 2, lines 20-25), it would be reasonable to set ten as the maximum limit and not allow bets on the face cards. Even though this is not specifically indicated in Smith it would be obvious, as they are well known to have a value of ten and allowing the bet on face cards would thus unevenly distribute the odds when the face cards are counting as ten.

Regarding claim 6, betting limitations are notoriously well known in the art and it would be obvious to a skilled artisan to incorporate them as a means to establish table limits as well as to ensure a proper hold is maintained. Motivated for establishing these limits lies in the fact that a skilled artisan knows for a game to sell it must be attractive to the casino in that it maintains a certain percentage of the bets. A skilled artisan would understand that establishing betting limits would be a means to ensure this, thus making the game more desirable to casinos who are then more likely to purchase such a game with a set hold.

Regarding claim 7, Smith discloses a standard deck with 52 playing cards (Abstract) with the standard suits and can count the Ace as 1 (Column 2, lines 20-25).

Regarding claim 8, Smith does not disclose a joker that counts as an ace; however, alterations adding and removing cards would be obvious to a skilled artisan as long as the paytable is updated to include the specific changes. Jokers are known in the art and using one would be a design choice obviated for the reason of adding a further element of chance to the game, as the Ace is representative of nearly the lowest possible value, thus increasing the odds of winning a bigger prize. This would motivate players to play and thus would also motivate the designer to incorporate such to draw players.

Regarding claim 9, it is also reasonable to understand that Smith introduced a zero card to the standard deck wherein the deck would not have 53 cards. As discussed above, the introduction of a zero or a joker is obvious to a skilled artisan wherein which one is used over the other is a design choice. As is obvious by the random dealing of the cards, each had an equal possibility of being chosen.

Regarding claim 10, Smith discloses a separate smaller square for each bet. The squares are ordered horizontally; however, arranging them cubically would be an obvious design choice motivated by the fact it would take up less space. Each square has a numeral. As discussed above, additional indicia with payout odds would be obvious. How the odds are presented or calculated are a design choice, obvious to a skilled artisan. The means and methods of payout are based on the needs and desires for the game and a skilled artisan would be motivated to calculate in a manner that attracts players yet keeps a casino hold that is appropriate.

Regarding claims 11-15 and 17-19, a skilled artisan understands how a method can be incorporated into an electronic apparatus to program the apparatus to enact the method. A

Art Unit: 3713

method, like a program, is merely a series of steps enacted to obtain a certain result. A skilled artisan most definitely understands how electronic devices can mimic table games and doing so is widely accepted and implemented in the art. Motivation for doing so lies in the fact that the player can play independent of others and allows the player to play whenever they want to as well as without the pressure some feel by being around others and dealers thus providing for certain types of players who may not have played a table game. Thus by using an electronic apparatus a broader range of users is reached and thus more revenue for the casino can be generated.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US patent No. 6,264,200) in view of Peterson (US Publication No. 2003/0054873).

It is known that all computers have a processor, memory, display as well as appropriate input buttons for the controls required for their application. Smith discloses that the squares are ordered horizontally; however, arranging them cubically would be an obvious design choice motivated by the fact it would take up less space. Each square has a numeral. As discussed above, additional indicia with payout odds would be obvious. How the odds are presented or calculated are a design choice, obvious to a skilled artisan. The means and methods of payout are based on the needs and desires for the game and a skilled artisan would be motivated to calculate in a manner that attracts players yet keeps a casino hold that is appropriate.

Peterson discloses a gaming machine that displays a plurality of information messages to the user based on user choices and the game state. Peterson discloses motivation for messaging includes the fact that it is important for the player to understand the eligibility requirements for the gaming device (paragraph 6). By incorporating interactive messages and warnings people will not have to take the time to read the instructions or both with the details. It

also reduces complicated rules to a set of related messages (paragraph 8). Additionally, gaming machines are known to display the amount of wager and have the capability to inform the player when full bets are not being used. The machines deduct credits for each wager and the established structure for wagering is integrated within the software and methods of informing player about bet structure is known as payable layouts. It would have been obvious to one of ordinary skill in the art to incorporate the messaging teachings of Peterson in order to provide information to the player in a manner that is efficient and easily understood, as disclosed by Peterson, as a means to inform the player to understand the requirements without burdening them with having to read a number of instructions.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**US Publication No. 2003/0071415, US Patent No. 4,887,819, US Publication No. 2002/0043766, US Publication No. 2003/0032471, US Publication No. 2002/0037765:** Casino game with a card version of roulette involving on betting on the rank of the cards the user would get.

**US Publication No. 2003/0153380:** Card game which allows players to pre-select receiving certain numbers or characteristics that will be associated with their hand.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Marks whose telephone number is (703)-305-7497. The examiner can normally be reached on Monday - Thursday (7:30AM - 5:30 PM).

Art Unit: 3713

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa J Walberg can be reached on (703)-308-1327. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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